tion of such broadcasts on health matters as are given under the auspices of recognized associations of licensed physicians or Federal, State and local health departments; and be it further

Resolved, That such protest be sent to the broadcasting companies and the Federal Communications Commission.

The members of your organization have doubtless been moved to protest against the type of medical advice that is furnished over the radio in connection with patent medicine broadcasts. This type of promotion in behalf of self-medication is becoming more subtle and radio announcers are endeavoring to tie up their advertising message with some complimentary reference to the medical and pharmaceutical professions.

We believe the time has come for concerted action to curtail this type of activity, in behalf of the lay public which is unable to recognize the difference between correct medical advice and commercial propaganda, and we trust, therefore, that your organization may pass a resolution similar to the one noted above and send it to broadcasting companies and the Federal Communications Commission at Washington, D. C. . . .

319 Trenton Trust Building,

Very truly yours,

JOINT COMMITTEE ON PROFESSIONAL RELATIONS.
Prescott R. Loveland, *Secretary.*

Subject: Certain reports—To be had on application.

THE AMERICAN PUBLIC HEALTH ASSOCIATION

New York, N. Y., May 11, 1939.

To the Editor:—The American Public Health Association has recently adopted five reports dealing with educational qualifications of public health statisticians, school health educators, public health engineers, sanitarians, and subprofessional field personnel in sanitation. A copy of each report is sent you in the hope that you will find it possible to carry an item in your Journal announcing their availability. These reports are distributed free of charge in the hope that they will serve a useful purpose in raising the educational standards of professional public health personnel. Copies may be secured from the Book Service, American Public Health Association, 50 West Fiftieth Street, New York, N. Y.

Your coöperation will be greatly appreciated.

50 West Fiftieth Street.

REGINALD M. ATWATER, M. D.,
Executive Secretary.

Subject: Benzyl benzoate, not Benzoyl benzoate: A correction.

(COPY)

May 11, 1939.

To the Editor:—My article in the April issue, page 265, of CALIFORNIA AND WESTERN MEDICINE, "A Comparative Study of Sodium Thiosulphate Treatment of Scabies as Compared with Benzyl Benzoate," has an error which is of great importance (and which was not noted at the time I corrected the proofs).

Instead of benzoyl benzoate, as stated in the article, it should be benzyl benzoate. These two drugs are entirely different, benzyl benzoate only being active in the treatment of scabies.

I would appreciate it very much if you have any means of making a correction in your next issue of CALIFORNIA AND WESTERN MEDICINE.

Very truly yours,

ARNE ELY INGELS, M. D.

MEDICAL JURISPRUDENCE†

By HARTLEY F. PEART, ESQ.
San Francisco

EXTENSION TO NURSE OF OBLIGATION TO KEEP COMMUNICATIONS CONFIDENTIAL

In the April issue of CALIFORNIA AND WESTERN MEDICINE, the author treated under the title, "Legal and Ethical Protection Given to Facts Made Known to a Physician in Confidence," various phases of the obligation resting upon a physician to keep inviolate, facts learned from or about a patient during the existence of the physician-patient relationship. The following is a brief summary of an opinion of a California District Court of Appeal upon the issue: How far, if at all, does the obligation of confidence bind a physician's assistants? The facts of the case in which the opinion was rendered (*Kramer* vs. *Policy Holders' Life Ins. Assn.,* 5 Cal. App. (2nd) 380) are interesting though recurrent.

Plaintiff brought suit, as beneficiary, upon an insurance policy in which his diseased wife was the insured. On February 2, 1930, in her application for the policy, deceased stated that she had consulted a doctor within three years for a minor operation of the breast, but had fully recovered from such operation and that her present state of health was good.

On July 2, 1930, the insured visited the Coffey-Humber Clinic in Los Angeles. At that time and place, a staff physician, in the presence of his stenographer, took the patient's history and made a physical examination. From the patient he learned, among other things, that between the 11th and 12th of December, 1929, less than two months before the acceptance of her application for insurance her right breast had been removed because of cancer. Also that, at the time of the removal of the right breast, she was informed by the doctor that there was already a tumor of the left breast, and many other facts as to her previous state of health. The physical examination revealed to the doctor that the insured had an extensive spread of cancer, originating in the right breast, which, in his opinion, had been in existence in her system for in excess of two years.

To show that the representations made by the insured in her application for insurance were false and untrue, and known by her to be so, the company attempted to introduce the testimony of the physician as to what he learned in taking the patient's history and making his examination. The appellate court in sustaining the act of the trial court in ruling out the testimony of the physician on the ground that the physician had gained such information in professional confidence, extended its opinion to include a discussion of the position of the physician's stenographer in relation to the confidential communications, which discussion is the latest expression of a California appellate court on this phase of law.

Due to the fact that the stenographer in this instance kept the registry of all appointments, got the patient ready, took off her waist so as to get at her chest, and remained during the examination to take down in shorthand all that the physician discovered, it can be said that her duties resembled those of an office nurse.

The Court said:

As already suggested, the mere presence of a third person does not mean that the privilege has been waived as to the doctor. The capacity in which the third person is present makes a real difference. There are three lines of cases in this respect. One in which a third party is present, whose

† Editor's Note.—This department of CALIFORNIA AND WESTERN MEDICINE, presenting copy submitted by Hartley F. Peart, Esq., will contain excerpts from and syllabi of recent decisions and analyses of legal points and procedures of interest to the profession.

presence is in no respect necessary, and this is obviously apparent to the patient. In this type of case some decisions hold that both the physician and the third party may testify, and some that the third party only may testify. The second line of authorities applies to that type of case in which a third party is present and the patient has a right to believe that said party is present as one of the agents or assistants of the physician in charge. In this class the authorities agree that the attending physician cannot testify, but as to the third persons they divide themselves into three groups. The first group for convenience may be referred to as the co-professional class, in which it is held that when said third party being a licensed doctor is a consulting doctor; or an assistant doctor; or the partner of a doctor; neither the attending doctor nor his co-professional may testify.

The second group for convenience may be called professional agents, in which it is held that when a nurse or other third person is actually working as agent and assistant under the supervision of the doctor in charge, such agent is covered by the privilege as well as the doctor. A study of the cases in this group, however, shows that the statute had been extended to include nurses. (*Culver* vs. *Union Pac. R. Co.*, 112 Neb. 441 (199 N. W. 794)). Such not being the fact here, we will not discuss this group, although the Culver case, *supra,* speaking without regard to the amendment of the statute to include nurses, does suggest that the statute should as a matter of law be extended to the professional assistant. We express no opinion on the suggestion, since none is necessary to a decision of this case.

The third group holds that in situations where the presence of a third person is apparently necessary, the doctor is covered by the privilege, but the necessary third person is not.

This third general line of authority applies to those cases in which a nurse or other third person, as separate individuals in independent positions and not as incidents to a conference with the doctor in charge, receive medical confidence. All of these cases are to the effect that such confidence is not within the privilege.

An analysis of the facts in the cases coming within this group and the rules therein enunciated demonstrates the extreme jealousy on the part of practically every court which has been asked to construe a statute similar to our own, to guard the privilege and to save it from being frittered and nibbled away because of factual situations which do not come within the letter of the statute, but are plainly embraced within its intent and spirit.

Further on the Court stated:

The only California case to which our attention has been called which is at all related on the facts is the case of *Horowitz* vs. *Sacks,* 89 Cal. App. 336 (265 Pac. 281). In that case the Court says at page 344: ". . . All of the information the witness obtained from his patient was obtained in the presence and hearing of third parties, the husband, mother, and brother of the patient. Such communications of the patient were not confidential and therefore were not privileged." It will be discerned, however, that the Sacks case is easily distinguished in at least one vital element, even if there were no other elements in that case which do distinguish it. In the instant case the communications were made in the presence of a necessary third party who was acting as the agent of the doctor, under his direction and supervision and under such circumstances that the patient had every right to conclude that the presence of such third party was necessary. In the Sacks case the information was given in the presence of nonprofessional and unnecessary third persons, in so far as the attendance of the doctor was concerned. It is apparent that although called a stenographer, the third party in the instant case was in reality and did perform all the duties of an office nurse. This distinction calls for the application of a principle different from that applicable when a third party has, strictly speaking, no business being present. (See cases *supra.*) The statement in the Sacks case must, however, be construed in relation to the facts to which it was applied. As a general statement purporting to be the law in all cases, it cannot be accepted, and the cases cited to support the general statement made in the Sacks case do not so hold. It is quite clear that the Court in the Sacks case did not so intend it, when the statement is read in the light of the authorities cited to support it, and the facts to which it was applied. The cases referred to in the Sacks case and others called to our attention by appellant with practical unanimity are decided on the doctrine that the communications made and testified to were not in fact confidential, and were not intended to be so by the person making them, and this conclusion is reached by the Court in those cases not merely because the nonprofessional unnecessary third party was present, but on additional facts such as the voluntary nature of the statements, their irrelevancy to the confidential relationship, the fact as to whether the relationship existed at all, and other important circumstances.

In *Southwest Metals Co.* vs. *Gomez, supra,* the Federal Circuit Court of Appeals of this district had before it a parallel situation—the construction of an Arizona statute similar to our own. It was there held that the nurse could testify, but that the doctor could not. We are satisfied that the presence of the stenographer did not operate to waive the privilege, in so far as the doctor was concerned, and that the motion to strike was correctly granted. Since the stenographer was not called and did not testify, we are not called upon to determine whether she could testify.

The opinion above referred to clearly shows that the law is still unsettled in California in regard to whether or not a patient can rely upon protection being afforded to his or her statements when a third party is present. If the presence of a third party or parties is unnecessary, that party is not bound by the rules governing confidential communications. Should the third party be a professional agent, such as a nurse, such agent would probably be bound as is the doctor, but the point is still unsettled.

SPECIAL ARTICLES

INDEX

PROPOSED NATIONAL HEALTH PROGRAM*

The assumptions upon which the structure of the proposed national health program is based are essentially fallacious.

1. It is assumed that the health of the people of the United States is neglected and of low order. The record is consistent to the contrary effect. The national health was better in 1938 than in any past year and has been improving steadily for the past ten years. No other 130,000,000 people in man's history have enjoyed so favorable an experience of life as the people of the United States do today.

2. It is assumed that 40,000,000 people in the United States are unable, and in fact do not get the medical care they need. The evidence of physicians, medical institutions and widespread human experience convinces us that those who need medical care and want it are receiving it, except where poverty and sparsity of population groups have failed to attract physicians to settle among them.

3. It is assumed that large expenditures of federal money will make great improvements in health and care of the sick at the same time that economic and social inequalities of serious degree remain uncorrected.

Experience suggests that in the United States expenditures for health and care of the sick have been increasing at as rapid a rate as the several states, cities, and counties can afford, and as fast as trained personnel can be had to carry out the technological procedures.

Whatever money is granted from Washington to states has been taken first out of the states and to that degree has deprived states and local health jurisdictions of resources which they know better how to spend than do officers of federal departments.

4. It is assumed that there is a spontaneous, informed, widespread demand by the laity, particularly the unemployed, unemployable, relief, and subsistence level wage-earners for an amount and quality of medical care and health protection not now available to them.

* Summary of a statement by Haven Emerson, M. D., given at a dinner meeting, March 15, 1939, New York City.